STATE OF MICHIGAN

COURT OF APPEALS

MI-TECH SALES, INC.,

Plaintiff-Appellant,

v

FOCUS ENHANCEMENTS, INC.,

Defendant-Appellee.

UNPUBLISHED
April 15, 2003

No. 237565
Oakland Circuit Court
LC No. 99-017710-CK

Before: Jansen, P.J. and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's judgment. We affirm.

On September 23, 1996 plaintiff, a sales representative specializing in electronics, and defendant, a manufacturer of computers and electronics, entered into a contract that designated plaintiff as defendant's exclusive sales representative within a specific geographical area. Paragraph 8 provided both that the contract would terminate one year from its commencement date unless renewed in writing, and that either party could terminate the contract upon sixty days written notice. The parties did not renew the contract in writing; however, plaintiff continued to act as defendant's sales representative after September 23, 1997, and defendant continued to pay plaintiff commissions.

In 1996 and 1997 plaintiff attempted without success to procure an agreement for the sale of defendant's products at Office Max stores. In early 1998 defendant developed a computer/television product in which Office Max expressed interest. Thereafter, defendant notified plaintiff that it was terminating the parties' relationship effective June 1, 1998. Defendant entered into a contract with Astro-Kam, Inc., pursuant to which Astro-Kam agreed to serve as defendant's exclusive sales representative for the same geographical territory served by plaintiff. Subsequently, Office Max entered into an agreement with defendant for the purchase of the computer/television product. The purchase totaled $1.428 million dollars. Defendant did not pay plaintiff a commission on the sale.

Plaintiff filed suit alleging that defendant breached the parties' contract and violated the sales representatives' commissions act, MCL 600.2961, by failing to pay commissions due under the contract. Plaintiff alleged that defendant's termination letter was received on April 30, 1998, and that pursuant to the contract's sixty-day termination provision, the contract terminated on

June 29, 1998. Plaintiff asserted that pursuant to MCL 600.2961(5)(b) it was entitled to an amount equal to twice the amount of commissions due or $100,000, whichever was less.

The trial court conducted a two-day bench trial. At the conclusion of the proceedings the trial court found that because the parties did not execute a writing to renew the contract, the contract terminated on September 23, 1997. After that date, plaintiff was no longer defendant's exclusive sales representative. The trial court found that the parties did not have an implied in fact contract because there was no meeting of the minds; neither did the parties have a contract implied in law. The trial court found that defendant's letter and the contract's sixty-day termination provision served to terminate the parties' relationship effective June 29, 1998.

In a subsequent written decision the trial court rejected plaintiff's assertion that it was entitled to a commission on defendant's contract with Office Max pursuant to the procuring cause doctrine. The procuring cause doctrine provides that an agent is entitled to recover commissions if his efforts were the procuring cause of a sale, even if he did not personally complete the sale. However, an agent who does not participate in the negotiation of a particular contract cannot be said to be the procuring cause of a sale. *Reed v Kurdziel*, 352 Mich 287, 294; 89 NW2d 479 (1958); *Roberts Assoc Inc v Blazer Int'l Corp*, 741 F Supp 650, 653 (ED Mich, 1990). The trial court found that no evidence showed that plaintiff participated in the actual negotiation of defendant's contract with Office Max; therefore, plaintiff was not entitled to a commission on that contract. The trial court entered judgment awarding plaintiff a total of $16,975.22.[1]

A contract implied in fact arises when services were performed by a party who at the time expected compensation from another party who expected to pay for the services. A meeting of the minds must exist for a contract implied in fact to be formed. A contract implied in law is an obligation imposed by law to do justice even though there was no promise made or intended by either party. A contract may be implied in law if a party received a benefit from another party and if retention of the benefit would be inequitable absent reasonable compensation. *In re McKim Estate*, 238 Mich App 453, 457-458; 606 NW2d 30 (1999).

When construing a contract, the trial court must ascertain the intent of the parties from the language of the contract. *Zurich Ins Co v CCR & Co (On Rehearing)*, 226 Mich App 599, 604; 576 NW2d 392 (1997). Generally, the language of a contract is interpreted according to its plain and ordinary meaning. *Schroeder v Terra Energy, Ltd*, 223 Mich App 176, 182; 565 NW2d 887 (1997). The interpretation of a contract presents a question of law that we review de novo on appeal. *Archambo v Lawyers Title Ins Co*, 466 Mich 402, 408; 646 NW2d 170 (2002). We review a trial court's findings of fact for clear error. MCR 2.613(C).

Plaintiff argues that the trial court erred in concluding that it was not entitled to a commission on defendant's contract with Office Max under either the terms of the original contract or the procuring cause doctrine. We disagree and affirm the trial court's judgment. The parties' original contract stated that the agreement would terminate one year from the date of

[1] The trial court awarded plaintiff commissions on several other sales. Those commissions are not at issue in this appeal.

commencement unless it was renewed in writing. This language was unambiguous, and the trial court did not clearly err in finding that it expressed the intent of the parties. *Schroeder*, *supra*; *Zurich*, *supra*. It was undisputed that the parties did not renew the contract in writing; therefore, the trial court did not clearly err in finding that the contract terminated September 23, 1997. Plaintiff continued to act as a sales representative for defendant after that date and defendant continued to pay plaintiff commissions; however, plaintiff points to no evidence that showed that both parties intended that the relationship would continue to be exclusive. Given the lack of evidence of a meeting of the minds on the issue of the exclusivity of the relationship, we conclude that the trial court did not clearly err in finding that after September 23, 1997 plaintiff was no longer defendant's exclusive sales representative. The trial court did not err in finding that the parties did not have an implied in fact contract. *McKim*, *supra*, 458.

Furthermore, the trial court did not clearly err in finding that plaintiff did not procure the Office Max account for defendant and thus was not entitled to a commission on that contract. The evidence showed that plaintiff introduced defendant's computer/television product to Office Max, and talked with the company about carrying the product, but no evidence showed that those talks progressed to the negotiation stage. Defendant and Office Max entered into a contract only after plaintiff was no longer involved in the process. The trial court did not clearly err in finding that plaintiff was not the procuring cause of the contract between defendant and Office Max, and that it was not entitled to a commission for that reason. *Reed*, *supra*; *Roberts*, *supra*.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood